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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/908,945	07/19/2001	Akira Wakabayashi	892_019	1922

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BURR & BROWN

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SYRACUSE, NY 13261-7068

EXAMINER
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LEVINE, ADAM L

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/908,945

Applicant(s)

WAKABAYASHI, AKIRA

Examiner

Adam Levine

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-6 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-5 and 12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Examiner withdraws the Final Office Action, paper number 051205, mailed on May 18, 2005. This Non-Final Office Action, paper number 051205A, replaces that Final Office Action.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 10, 2005, has been entered.

#### ***Response to Amendment***

Applicant has amended Claim 3 and newly added Claims 12-14. Previously withdrawn Claim 6 remains withdrawn. Pending Claims 3-5 and 12-14 were examined in this final office action.

#### ***Response to Arguments***

Applicant's arguments filed January 10, 2005, have been fully considered but they are not persuasive.

With regard to Claims 3 and 4, Examiner respectfully disagrees with the Applicant. Applicant mischaracterizes Woolston as “explicitly” stating that the four modes of operation are not linked. The four modes of operation are linked to one another through the consignment mode. By logging into the consignment mode, the participant can access any of the other four modes (see at least column 3 lines 8-24).

Applicant also mischaracterizes Woolston as disclosing that goods waiting for an auction date are identified as such and “may not be purchased on the electronic market” (see column 5 lines 50-54). This appears in a section describing the participant's options when specifically choosing to auction a good. The entire quoted portion from which the excerpt is taken reads,

**“In this mode**, the good may be posted on the consignment node by the means described above but the data record representing the good is identified as waiting for an auction date and may not be purchased on the electronic market. **Alternatively**, an item may be in the electronic market of the consignment node with a high reserve price that may be lowered in the auction or liquidation mode.”

(emphasis added; see column 5 lines 51-57).

Therefore, the reasons remain the same for combining the market and auction modes of Woolston with the bid determining means of Friedland in order to determine the highest bid received between the prior bid receiving means and the bid submission receiving means. It would have been obvious to one of ordinary skill in the art at the time of the invention to include in Woolston the bid determining means of Friedland in order to determine the highest bid received between the prior bid receiving means and the bid submission receiving means, in order to increase competition in the auction

process and encourage greater use of the process by purchasers by including both kinds of offers received in the auction process.

With regard to Claim 5, Examiner respectfully disagrees with the Applicant for the reasons noted above. Since there are no deficiencies in Woolston and Friedland, the Examiner has not considered whether the alleged deficiencies would have been overcome by Fujisaki.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**1. Claims 3, 4, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston (US 5,845,265) in view of Friedland (US 6,449,601).**

Woolston teaches an online trading system that allows users to list articles online for sale or auction, to move articles between market and auction modes, and to search for and purchase articles. Woolston teaches sale receiving means for receiving submission for sale of an article from a seller terminal, information inputting means for inputting information about the article, and information storing means for storing the information about the article input from said information inputting means (see at least column 2 line 2 – column 4 line 58). Woolston further teaches an information showing means for showing information about the article and prior bid receiving means for

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receiving a bid for the article, both via communicating means and for a predetermined period (see at least column 4 line 60 – column 6 line 44; column 13 lines 45-57).

Woolston further teaches:

- Auction selection means for putting the article up for auction after a predetermined period; displaying information about the article for a predetermined period before the date of the auction: (see at least column 5 line 48 – column 6 line 67),
- Bid submission receiving means for receiving bids for the article at the auction (see at least column 6 lines 21-53), and
- Showing information about the article at a specific time (see at least column 16 lines 27-66).

Woolston teaches all of the above as noted under the 103(a) rejection and teaches a) receiving prior bids on an item in one mode with a high reserve price, b) setting a predetermined time for conducting an auction, and c) lowering the item's reserve price when the item is in the auction or liquidation mode. However, Woolston does not disclose a successful bid determining means for determining a successful bid based on the information received by the prior bid receiving means and that received by the bid submission means, bid determining means comparing highest price received by prior bid receiving means with highest price received by bid submission receiving means to determine that the article is sold at a higher price of the two submissions.

Friedland teaches a successful bid determining means for determining a successful bid based on the information received by the prior bid receiving means and that received by the bid submission means, bid determining means comparing highest price received by prior bid receiving means with highest price received by bid submission receiving means to determine that the article is sold at a higher price of the two submissions (see at least column 6 lines 14-52). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method and apparatus of Woolston to include the bid determining means of Friedland so that the prior bid receiving means of Woolston and the bid submission receiving means of Woolston include the bid determining means of Friedland in order to determine the highest winning bid received as between the prior bid receiving means and the bid submission means, in order to ensure the winning bid is the true highest bid, and thereby increase competition in the auction process and encourage greater use of the process.

**2. Claim 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston (US 5,845,265) and Friedland (US 6,449,601) as applied to claim 3 above, further in view of Fujisaki (US 4,789,928).**

Woolston and Friedland teach all of the above as noted under the 103(a) rejection, and teach a) receiving prior bids through prior bid receiving means, b) receiving bids by a bid submission receiving means, c) determining the highest bid between the two means of receiving bids, and d) awarding the sale to the highest

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bidder. Woolston further discloses extracting a stored unit of value from the ultimate sales price to benefit the operator (see at least column 5 lines 32-36). Woolston and Friedland, however, do not disclose storing a unit price for bidding up the highest bid received by the bid submission receiving means. Fujisaki teaches storing a unit price for bidding up the highest bid received by the bid submission receiving means (see at least Figs. 6 and 16; column 7 lines 24-35; column 12 lines 16-50). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method and apparatus of Woolston and Friedland to include storing a unit price for bidding up the highest bid received by the bid submission receiving means as taught by Fujisaki, in order to benefit the operator of the auction and defray the costs of operation.

Woolston and Friedland teach all of the above as noted under the 103(a) rejection, and teach a) purchasing, selling, and auctioning a variety of articles, b) purchasing, selling, and auctioning collectibles and other previously owned articles, c) showing information regarding articles being sold to potential bidders, and d) awarding the sale to the highest bidder. Woolston and Friedland, however, do not disclose the article being a used car. Fujisaki teaches the article being a used car (see at least column 4 lines 46-64). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method and apparatus of Woolston and Friedland to include used cars as taught by Fujisaki, in order to make it easier to purchase and sell used cars, thereby making them more fungible and increasing commerce.




***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Levine whose telephone number is 571.272.8122. The examiner can normally be reached on M-F, 8:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W. Coggins can be reached on 571.272.7159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Adam Levine  
Patent Examiner  
May 31, 2005

  
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